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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 MICHAEL DEAN VICKS,

12 Petitioner,

13 vs.

14 C. NOLL, Acting Warden,

15 Respondent.

Civil No. 09-2656 IEG (RBB)

**SUMMARY DISMISSAL OF
SUCCESSIVE PETITION PURSUANT
TO 28 U.S.C. § 2244(b)(3)(A)
GATEKEEPER PROVISION**

16 Petitioner, Michael Dean Vicks, a state prisoner proceeding pro se, has filed a Petition
17 for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. This case is summarily dismissed
18 pursuant to 28 U.S.C. § 2244(b)(3)(A) as indicated below.

19 **PETITION BARRED BY GATEKEEPER PROVISION**

20 The instant Petition is not the first Petition for a Writ of Habeas Corpus Petitioner has
21 submitted to this Court challenging his December 1983 conviction in San Diego Superior Court
22 case No. CR 63419.

23 This is not the first habeas corpus petition Petitioner has filed in this Court challenging
24 his conviction in case no. CR 63419. On April 23, 1992, Petitioner filed a habeas corpus petition
25 in this Court challenging this same conviction, CR 63419, in case no. 92cv0622. On December
26 1, 1992, this Court denied that petition as successive to a previously filed petition in case no. 86-
27 2069. (*See* Order filed Dec. 1, 1992 in case No. 92cv0622 H [Doc. No. 11].) Petitioner
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1 appealed that determination. On May 23, 1994, the Ninth Circuit Court of Appeals affirmed this
2 Court's decision. (*See* Order in *Vicks v. Ratelle*, No. 93-55276 (9th Cir. May 23, 1994).)


3 Petitioner is now seeking to challenge the same conviction he challenged in his prior
4 federal habeas petitions. Unless a petitioner shows he or she has obtained an Order from the
5 appropriate court of appeals authorizing the district court to consider a successive petition, the
6 petition may not be filed in the district court. *See* 28 U.S.C. § 2244(b)(3)(A). Here, there is no
7 indication the Ninth Circuit Court of Appeals has granted Petitioner leave to file a successive
8 petition.

9 **CONCLUSION**

10 Because there is no indication Petitioner has obtained permission from the Ninth Circuit
11 Court of Appeals to file a successive petition, this Court cannot consider his Petition.
12 Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner filing a petition
13 in this court if he obtains the necessary order from the Ninth Circuit Court of Appeals. **THE**
14 **CLERK OF COURT IS DIRECTED TO MAIL PETITIONER A BLANK NINTH**
15 **CIRCUIT APPLICATION FOR LEAVE TO FILE A SECOND OR SUCCESSIVE**
16 **PETITION TOGETHER WITH A COPY OF THIS ORDER.**

17 **IT IS SO ORDERED.**

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19 **DATED: December 8, 2009**

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21 **IRMA E. GONZALEZ, Chief Judge**
22 **United States District Court**
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